Corruption amongst the living oracles of Law

Awantika Sarkar

2013

Abstract

Judicial corruption appears to be a global problem. It is not restricted to a specific country or region. Yet, manifestations of corruption seem to be at their worst in developing countries and countries in transition. Virtually nothing is known authoritatively about corruption in the judicial system. No Bar amongst major countries in the world today is as poorly regulated in terms of entry, supervision of conduct and sanctions as the Indian Bar. We need to look beyond so as to figure out what is holding back qualitative justice in our country. The article seeks to determine and highlight the complex sources of corruption in the Indian judiciary, specially in West Bengal and highlight structured cases those have tarnished the name of the judiciary. Most importantly, the article suggests ways to bring about solutions to combat the “endemic affecting qualitative justice.”

Article

Corruption is a common word which has become a topic of discussion in all areas of life, corner of the world and by people across the globe. It is now recognized to be one of the world's gravest challenges. In any society, there is a difference between what happens above board and what is under the table, of what is accepted and what causes outrage. Thus, at the end of the day you bring home the sordid reality of corruption. 'Corruption that is all around us, omnipresent, almost like a distorted, antithetical version of God for the New Millennium. [1]

If there is corruption in society, each one of us is responsible. It is wrong to blame the system. Why do we separate ourselves from the system? We are the ones to vote the corrupt to power. We are the one who endlessly suffer from all deprivations and refuse to raise voice. And then when it becomes too much, we crib.

Corruption is a symptom of a disease that has as its progenitors, over-centralization, non transparency in all government functions and lack of accountability. 'Judicial corruption appears to be a global problem. It is not restricted to a specific country or region. Yet manifestations of corruption seem to be at their worst in developing countries and countries in transition. [2] Similarly, judicial corruption in India is a consequence of the nexus between bar, bench, politics and system. Corruption within the judicial system is one of the most important reasons for the persistence of high levels of corruption in India because a corrupt judicial system shields impunity.

Respect of judiciary emerges from their competence to snuffle truths from a heap of lies. Power of Judiciary does not exist in convicting criminals nor penalizing for vilification, but it lies in the trust, faith, belief and confidence of a common man for getting justice by applying the same norms, for the poor or rich, by the courts.

The gravest challenge before the Indian judicial system is not to spot and then throw away rotten eggs. Instead, the Supreme Court must forge a come back to basics that the court is a platform for principled adjudication supported by legal rules that build a coherent and comprehensible legal system.

A recommenced attention on legal discipline and acumen and is likely to produce far reaching judicial reform rather than any attempt to spot the rotten eggs in the judicial system.

India is such a country where culpability is a debatable issue but what causes corruption to spread its tentacles within the society is not. Majority votes are received by lack of transparency, for being the single largest factor that provides an ideal breeding ground for corruption.

Corruption in the judiciary handicaps the legal and institutional mechanism designed to curb corruption. Therefore, Judiciary has to be clean and corruption free because that is the only institution on which citizens still have some faith and respect left. There is no effective mechanism- body or institution to deal with corruption in judiciary. Currently even though it is a matter of common knowledge that corruption does exist in judiciary but it is not spoken openly just because people fear the contempt of court for criticizing judiciary.

In this context, recent comments of the Hon'ble Chief Minister of West Bengal, made in the Platinum Jubilee Celebration of the State Legislative Assembly are relevant:

> At times favourable verdicts are given in return for money. These days, judgments are purchased. There is corruption among a section of the judiciary. I know there can be a defamation suit against me for saying this. But this must be said and I am ready to go to jail for saying so,[3]

And as a result she had to face contempt proceedings for her expression. After the heat wave was spread all around there was a great uproar but it can be firmly affirmed that silently within ones own self each and everybody accepted what the Chief Minister said on the remarkable occasion.

Expecting the judiciary to correct its own shortcomings may be as hopeless as expecting the Indian Administrative Services to provide for the punishment of their own or expecting the politicians to clean up their own act. There must be a third party to "keep a watch", scrutinize and "to take action" in case of allegations of misconduct and corruption. Judges are human beings like all of us and are very much a part of the society. There could be temptations to surrender to corruption and still not being caught.

The Supreme Court's observations on the scandal in the Allahabad High Court are extremely disturbing. A bench consisting of Justice Markandey Katju and Justice Gyan Sudha Misra said on November 26, 2010 that most judges of the Allahabad are corrupt and collude with advocates. Very sorry to state, many High Court judges are facing charges of corruption. The

unconcealed charge that many former Chief Justices of India were corrupt has given a new twist to judicial corruption.

Again, the recent shameful "Cash for Bail" scam involving judge T. Pattabhirama Rao is fresh in minds of citizens of this country. Though privately it is an open secret that "Cash for Bail" is a flourishing business in this country but no one has guts to speak on this due to the power of the judiciary who are enjoying the shield of "Contempt of Court". [4]

There is also the Rs 23-crore Ghaziabad PF scam in which a Supreme Court judge (since retired), seven Allahabad High Court judges, twelve judges of the subordinate courts and six retired High Court judges are allegedly involved. To everyone's surprise, the key accused, Ashutosh Asthana, died in jail mysteriously in October, 2009. He had provided vital documents to the CBI that established connivance of these judges. [5]

Now, coming to the condition of Calcutta High Court it has been found that a very few cases of corruption has been reported. The first being the case of Ananda Mohan Bhattacharjee J. originally a judge of Calcutta High Court was forced to resign in 1995 while he was the sitting Chief Justice of Bombay High Court, after it was found that he had received Rs. 70 lakhs as an advance amount of book from a publishing house known to have links with the underworld.

Thereafter in 1996, Ajit Sengupta J. made it a routine to issue ex parte, ad interim stay orders on anticipatory bail pleas from smugglers having links with the Mumbai underworld. He was arrested in 1996 for FERA violations after retirement. [6]

Corrupt judges in the higher judiciary can be removed only by impeachment. However, this method is cumbersome. The problem is not just a question of devising proposals for removal. The Judges (Inquiry) Act, 1968, prefaces impeachment by judicial inquiry. In Supreme Court Justice V. Ramaswamy's case, the inquiry indicted him but the impeachment motion fell through in Parliament in 1992. However, as days have passed our country has also witnessed the lengthy impeachment proceedings of the Calcutta High Court Judge Soumitra Sen.

In December, 2011, while the Parliament was proceeding with the motion for impeaching Justice Soumitra Sen of Calcutta High Court for "misconduct" and "misappropriation of funds" in the capacity of a court receiver in 1983, the last minute resignation of Justice Sen rendered impeachment proceedings 'infructuous'. Justice Soumitra Sen was appointed a High Court Judge on December 3, 2003. The Inquiry Committee noted that Justice Sen's actions

were, “an attempt to cover up the large-scale defalcations of Receiver’s funds”. [7]

After he became a Judge he did not seek any permission from the Court for approval of the dealings, as required by the Court, nor did he account for the funds. There were two charges against him. First, he was accused of misappropriating large sums of money which he received as a receiver appointed by the Calcutta High Court. Secondly, he was also accused of misrepresenting facts in this regard to the High Court. [8]

Justice Soumitra Sen, Justice Nirmal Yadav, Justice V.Ramaswamy, UP PF Scan involving Judges, Justice Katju’s remarks about Allahabad HC Judges and Justice Dinakaran are few example/incidents which would have never got exposed in 60 ’s, 70 ’s, 80 ’s or 90 ’s but have been exposed recently due to vigilant Media. As a result these incidents have eroded the faith of the common man in Judiciary. The point is if a Judge is corrupt then why not to act swiftly against him/her before further damage is done.

Justice Katju and Justice Misra also referred to the syndrome of “uncle judges”. The Union Law Ministry admits that this menace has spread to many High Courts, including those in Chandigarh, Shimla and Jaipur. In its 230th Report (2009), the Law Commission has recommended that in order to eliminate the practice of “uncle judges”, the judges, whose kith and kin are practicing in a High Court, should not be posted in the same High Court. Union Law Minister should work on a proposal to check this menace. [9]

Corruption in judiciary is very serious issue because impeachment mechanism to remove judges in case of misconduct or corruption has failed miserably and is not effective. Hence we need a Lokpal or “Independent Constitutional Institution” that will not need sanction from the President or Government to proceed against a judge facing corruption allegations or misconduct allegations. We need an institution who can investigate and if he finds prima facie evidence of corruption or misconduct against a judge then he can prosecute either through its police, CBI or own prosecution wing.

Judges appointing judges, judges investigating judges and judges promoting judges will only result in judges protecting judges.

Upendra Baxi, one of the eminent jurist of our country has suggested some interim partial measures that can be tried to ensure judicial accountability. One is to appoint judicial ombudsmen from two highly-regarded statutory bodies, the Election Commission and Comptroller and Auditor General (CAG) of India. As nothing prevents the CAG from initiating an independent review of the performance of the judiciary. The CAG could produce highly credible

and objective reports and help kick start a process of promoting transparency and accountability.

In view of the above discussion following solution methods can be suggested:

1. Bring judiciary (both higher and lower) in the ambit of Lokpal or "Independent Constitutional Institution"
2. Pass the judicial accountability bill as soon as possible.
3. Whistle-blower should be protected from suppressive contempt proceedings
4. Suo moto power to Lokpal/"Independent Constitutional Institution" to investigate against any judge including HC/SC of charges of corruption/ misconduct.
5. Lokpal/"Independent Constitutional Institution" should not require sanction from Government before proceeding against a judge.
6. Prosecute judge if prima facie evidence is found and to suspend him/her immediately.
7. The government should fast-track all cases of moral turpitude, corruption and nepotism.
8. The process of impeachment of a judge should be speeded up with a time limit for obtaining the President's sanction and impeaching him/her.
9. The country deserves a more credible, transparent and broad-based institutional mechanism for selecting judges.
10. As the UK Supreme Court had done , our apex court, too, should advertise vacancies in the Supreme Court and High Courts in the newspapers.
11. Judicial orders/judgments' should be subject to the review by an independent body if it is felt that the order was passed by corrupt means.

The judiciary is the public institution that is mandated to provide essential checks on other public institutions. [10] The need of the hour is pro-active intervention and pro active decision to see the misery of the common public who are facing litigations and are victims of such misconduct and corruption but are unable to speak a word due to the power of "Contempt of court". The time has come wherein Judiciary should be transparent, should be open to fair amount of criticism, and should be open to investigation in case of alleged corruption. Such a mechanism will protect the fair name of the vast majority of judges and of our judiciary which is today respected all over the world. At the end of everything, "Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident. Above all things, integrity is their portion and proper virtue." [11]

1. Vishakha Rao, Corruption one of the biggest evils in our society; The Views Paperpolitics, December 21,2011.

2. Petter Langseth, Oliver Stolpe- Strengthening Judicial Integrity Against Corruption, United Nations Global Programme against Corruption, Centre for International Crime Prevention, Office for Drug Control and Crime Prevention, United Nations Office, Vienna, 20 December 2000, for CUL Yearbook, 2000, p 4.

3. Sometimes court verdicts are purchased: Mamata Banerjee

4. Regarding Corruption in Judiciary

5. Ibid.

6. Corruption and nepotism have not spared even the highest office of the judiciary

7. Judges Impeachment Procedure and Justice Soumitra Sen's Case

8. Ibid.

9. Regarding Corruption in Judiciary

10. Petter Langseth, Oliver Stolpe - Strengthening Judicial Integrity Against Corruption, United Nations Global Programme against Corruption, Centre for International Crime Prevention, Office for Drug Control and Crime Prevention, United Nations Office, Vienna, 20 December 2000, for CIJL Yearbook, 2000. p 3.

11. Sir Francis Bacon.